> "As a legal conclusion flowing from this reasoning it would also seem that the duty of a judge whose right to sit was challenged be equally imperative, regardless of the ground of his disqualification urged, if within the terms of the Statute."

The legislature has enacted the following law which appears in the Revised Statutes of Missouri, 1939, Section 2012, of which the Court will take judicial notice:

> "No judge of any court of record who is interested in any suit or related to either party or who shall have been counsel in any suit or proceeding pending before him, shall without the consent of the parties thereto sit in trial or determination thereof."

To deny relator parity with other lawyers under similar circumstances or with the layman or corporation in the defense of his franchises and privileges is not based upon sound reasoning but upon "fanciful conjecture" and such reasoning is contrary to the equal protection clause of the Fourteenth Amendment to the Federal Constitution.

ARGUMENT.

The cases cited in respondents' brief alleging that the right to practice law is not a property right and that it does not constitute either liberty, property, privilege or immunity which is subject to the inhibitions of the Federal Constitution are inconsistent and in hopeless conflict with the long unbroken line of cases in this Court holding that the right to follow a chosen occupation is both property and liberty subject to such inhibitions and especially those of the Fourteenth Amendment to the Constitution.

Decisions holding to the contrary with those of this Court in the *Algeyer, Ex parte Virginia* and the *Slaughter House cases, supra*, holding that a lawyer has no vested actual or litigating right before the Federal Courts are in themselves discriminatory and that such a discrimination is unjust and unreasonable.

Relator contends that the practice of law existed prior to the foundation of the Courts of the land and prior to the existence of the Federal Constitution. That it was those skilled in the practice of the law who supervised the drafting of the Federal Constitution and that it was not the intent or purpose, either by implication or otherwise, to deny the lawyer parity with the layman before the Courts of the land when the privilege was first granted to the Courts to operate. To hold in effect that one following such a calling, and licensed to appear before the Courts of the land as agent, attorney and advocate with authority to protect his principal, is to be denied the right to protect himself under the same or similar circumstances, is an arbitrary and unreasonable discrimina-

tion and such decisions, which by implication so hold, should be reversed as repugnant to the law of the land and to common judgment. To hold otherwise is to hold the bar of the land up to public ridicule and contempt.

Relator states that the Supreme Court of the State of Missouri in the case of *State ex rel. McKittrick* v. *C. S. Dudley Co.*, 102 S. W. 2d 895, 340 Mo. 852, has held the right to practice law is a *franchise or privilege* not open to every person and that doctrine has been upheld in decisions from a number of states.

In 26 Corpus Juris 1022 and 1023, it is stated:

> "A *franchise* is entitled as property to protection under Constitutional guarantees and cannot be taken from the holder except in payment of due compensation or destroyed or arbitrarily interfered with by subsequent legislation or by arbitrary acts of public authorities in refusing to permit the use thereof."

Various jurisdictions, too numerous to recite have held a franchise to be a right or privilege granted by a sovereign power, a specific example of which is the case of *McAllister Eufaula Telephone Co.* v. *State ex rel. Baker-Reidt Merc. Co.*, 108 Pac. 962, 25 Okla. 524.

This high Court in the past has held that occupations such as that of the butcher, the baker, the barber, the plumber, the fish monger and the purveyor of liquors are all avocations subject to the inhibitions of the Fourteenth Amendment to the Federal Constitution, although subject to State and Federal regulation and police power.

The decisions cited in respondents' brief as well as any others along this line which deny the parity of the lawyer with that of common occupations constitute an unreasonable discrimination, a differentiation without a distinction, at least a reasonable one. To hold that the right to practice law or the franchise guaranteeing such

a right is not a right, privilege or immunity subject to the inhibitions of the Fourteenth Amendment to the Federal Constitution, but may be arbitrarily impaired or terminated by the State without regard to the Federal Constitution is in effect to raise the State above its creative source from which it derived its power as well as its charter.

In support of the contention of relator that the case at bar falls within the equal protection clause of the Constitution is the case of *Hartford Steam Boiler Ins. Co.* v. *Harrison*, 301 U. S. 549, 57 S. Ct. 838, 9, l. c. 461, wherein this Court held:

> "It may be said generally that the rights of all persons must upon the same rule under similar circumstances * * * that it applies to the exercise of all the powers of the State which can affect the individual or his property."

P. 462:

> "Discriminations are not to be supported by mere fanciful conjectures, * * * they cannot stand as reasonable if they offend the plain standards of common sense."

Relator contends that regardless of whether the right to practice law be termed a right, privilege, immunity, franchise, or property that there is a substantial right involved which affects the individual, otherwise there would be no necessity to have any adjudication of the matter, or to go before any Court, to issue summons, to file charges to destroy the franchise which had been previously granted.

If the right to earn a living at the practice of law and to represent others as agent and attorney before the courts and the drafting of corporate and other franchises,

is not a property right or a privilege, then any Court may arbitrarily and despotically strike the name of an attorney from its rolls without any trial or hearing as only the Court is involved.

The fallacy of such argument is too apparent to attract serious consideration, as the Courts consistently restrain the practice of law in individuals and corporations acting with out license. Such oppression and unreasonable discrimination affecting indirectly and directly the rights of all litigants and causing fear, apprehension and confusion to arise in the minds of the bar as well as the public should be clarified and decisions in conflict should be reversed, so that the Bar of the land may be placed upon a parity with the layman and its dignity as well as the dignity and usefulness of the Courts preserved. But above all the rights of the litigants forced to appear before the Courts through counsel should be protected and not subjected to oppression and intimidation by indirect means through regimentation exercised upon their Counsel.

In other words, the attorney should be free to act and not be constantly in fear that he will be deprived the right to make a living for himself and family should he merit the displeasure of some judge and this without the customary formalities of law afforded the client whom he represents or any other layman.

Relator contends that he has still another property right issuing out of, and dependent upon the perpetuation of the franchise to practice law granted him by the State of Missouri, which is subject to the inhibitions of the due process clause and the equal protection clause of the Fourteenth Amendment to the Federal Constitution, namely, that of good will accruing to him while operating under the franchise granted him by the State of Missouri.

Relator maintains that no one versed in the law will seriously contend that good will is not a property right in

any occupation or business, in fact the matter is so elemental that to cite decisions to this Court seems useless.

It has been held in the following cases that a doctor may sell the good will of his business and the Courts will recognize the right of the purchaser to such good will.

Hoyt v. *Holly,* 39 Conn. 326, 12 Am. Rep. 390.
Dwight v. *Hamilton,* 113 Mass. 175.
Townsend v. *Hurst,* 37 Miss. 679.
Davies v. *Mason,* 5 Term Rep. 118.
Mallor v. *May,* 11 M. & W. 652.

As to good will being a property right see also *Camden* v. *Stewart,* 144 U. S. 104, 12 S. Ct. 585, 36 L. Ed. 363.

It has also been held that:

> " 'Good will' is property of an intangible nature and the term 'property' includes good will"

in *Red Wing Malting Co.* v. *Willents,* (C. C. A. Minn.) 15 F. 2d 626, 629.

This Court has approved such a definition and doctrine in *Metropolitan Bank* v. *St. Louis Dispatch Co.,* 149 U. S. 436, 13 S. Ct. 44, 37 L. Ed. 799, and it has been adopted by Corpus Juris 28, p. 730:

In an outstanding case in Texas it was held,

> "Good will is property, It may be sold, it may also be damaged. There is no principle of law making any distinction between it and any other property with respect to the right of the owner thereof to recover damages for its destruction. * * * In that case as in this, damages resulted from the temporary interruption of its business. * * * In submitting issues calling for findings for damages of this nature, it must be borne in mind that the damages recoverable are for injuries to property. Good will though intangible is an integral

part of the business the same as are the physical assets."

Texas and Pacific Ry. Co. v. *Mercer*, 90 S. W. 2d 557, 560.

If property, which embraces good will, can be swept away by the arbitrary or despotic acts of any State Court without adhering to any of the rules of evidence, pleading or procedure or the Statutory or Constitutional law protecting individual rights, if it is definitely a State right not on a parity with the good will accruing to the layman, the individual or corporation operating under any other avocation or franchise, if the lawyer has the power to protect his client but not himself, then relator contends that we have opened an avenue for regimentation, oppression and discrimination that in effect emasculates the lawyer and holds him up to public ridicule and contempt.

The Relator contends that the practice of law is not so mean and lowly a calling that it is not entitled to an equal standing before the Courts of the land with that of the layman and the corporation which is entirely a creature of statutory origin.

That inconsistent decisions which tend to degrade the Bar and hold it up to ridicule destroy its dignity and usefulness.

Relator seriously contends that he is entitled to a fair hearing and due process of law before this high Court as well as the trial Court, before his right, privileges, franchises and good will can be impaired or destroyed.

That he is not supported by the Courts nor are other members of the Bar and that he and they are compelled to depend upon the public for their support in pursuance of their occupation.

That there is no real or actual difference between the rights obtained under the franchise granted a lawyer and

that bestowed upon an individual or corporation intrusted with the health, safety or lives of the public, all of which are subject to the police power of the State.

That this Court protects the liberty and property of the most lowly alien and that the question of citizenship should not enter into the decision.

Relator further contends that he is not only entitled to a hearing afforded any other lawyer, but a fair hearing before a disinterested judge and tribunal both of which have been denied, and that any alleged decision to the contrary is in conflict with the precepts of the Federal Constitution.

The question is momentous in that the rights, property and liberty of his clients have been submerged and subverted in the effort to retaliate upon relator.

That the writ of certiorari should issue because of the colorable judgment unsupported by the rolls and the evidence and because of the deprivation of the equal protection of the law, if for none of the other reasons advanced.

Respectfully submitted,

WALTER A. LEIMER,
Relator and Petitioner.